

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

Nicholas Catruch, Plaintiff

v.

The Picture Peoples, Defendant

Civil No. 04-cv-00118-G-C

**ORDER DENYING DEFENDANT'S MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED COMPLAINT AND IMPOSING
SANCTIONS ON DEFENDANT'S COUNSEL**

Before the Court for action is Defendant's Motion to Strike (Docket Item No. 14) Portion of Plaintiff's First Amended Complaint (Docket Item No. 13). The Motion is without any foundation whatever. It is based upon, as the Court finds from the briefing, an apparent ¹willful refusal to recognize the distinction between admission of papers issued by the Maine Human Rights Commission and similar agencies into evidence at trial as opposed to the appropriate reference to their issuance as an element of pleading a claim in the Complaint. Defendant's reliance on Patten v. Wal-Mart Stores, East, Inc., 300 F.3d 21 (1st Cir. 2002) and Smith v. Massachusetts Institute of Technology, 877 F.2d 1106 (1st Cir. 1989) is patently misplaced. Both these cases deal with the issue of whether said papers and findings should be admitted into evidence. No case is cited by the Defendant for the proposition that the findings by the MHRC cannot be pleaded in the Complaint. The extrapolation of such a supposed rule from a rule that

¹ Plaintiff's counsel in its Objection to the Motion makes a showing that Plaintiff's counsel called the attention of Defense Counsel to the distinction in an effort to avoid the need to respond to the Motion to Strike, and Defense Counsel persisted in the assertion of its demand that the Amended Complaint be stricken.

admission/exclusion of such evidence at trial is committed to the discretion of the trial Judge, id., is utterly without foundation.

This motion injects into this case a completely bogus issue of no merit whatever requiring the devotion of the time, concentration, and effort of opposing counsel and of the Court to a fruitless enterprise. Such strategy in motion practice in this Court is hardly responsible professional performance. Sanctions are sought, and the Court finds ²they may be warranted.

The Court finds from Plaintiff's papers that a reasonable time devotion to defending against the Motion has a value of Three Hundred Dollars (\$300.00).

IT IS HEREBY ORDERED that

1) the Motion be, and it is hereby, DENIED, and

2) that sanctions in the amount of Three Hundred Dollars (\$300.00) are hereby imposed on Defendant's counsel, to be paid to Plaintiff's counsel within ten (10) days of the date of this Order unless Defendant's counsel shall show cause with the Court, in writing on or before September 16, 2004, why such sanctions are not warranted and appropriate. See Fed.R.Civ.P., Rule 11 (c)(1)(B) and (c)(2)(B).

Dated at Portland, Maine this 7th day of September, 2004.

/s/ Gene Carter

GENE CARTER
Senior District Judge

² Plaintiffs make a "Request" in their Objection to Defendant's Motion (Docket Item No. 16) for a finding of sanctions. The parties have treated that request as a Motion. The Court is satisfied, however, that a "Request" in an "Objection" to a party's Motion is not within the intendment of Fed.R.Civ.P., Rule 11(C)(1)(A). Fed.R.Civ.P., Rule 11(c)(1)(A) requires a party to file a free-standing motion where sanctions are sought by the party.

In the absence of a formal Motion, this Court proceeds sua sponte under Rule 11(c)(1)(B) on the issue of sanctions.

Plaintiff

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